Director's Handbook
Volume 2

" … Many people feel that "Corporate Governance" and "Good Governance", often collectively and informally called "CG", are vague terms and are unsure about how to comply with them …"

If this is how you feel, this handbook will help you. It is intended for board and audit committee members to explain the duties of directors regarding board resolutions. This handbook will also provide guidelines and help make you aware of issues to consider while making resolutions.

Most of the notifications of SEC and SET are aimed to strengthen listed companies' CG, which will in turn increase the firms' accountability in the eyes of investors. Therefore, by following the guidelines, organizational CG will not only be strengthened, but a director would also work more efficiently and effectively with "care and loyalty" to preserve the firms' interest. Moreover, it will also help reduce the personal liability of individual directors.

This handbook is one of three volumes:

Volume 1 **Role, duties and responsibilities of directors and board of directors**

Volume 2 **Practice guidelines for directors**

Volume 3 **Rights and equitable treatment of shareholders and shareholder meetings**

The handbook deals only with overall principles, rules and guidelines. It will not provide details and cannot serve as a substitute for studying the legal framework or for assigning someone to ensure compliance with the law.

This handbook was screened by and based on advice from the Reading Committee, consisting of representatives from SET, Listed Company Association, Thailand Trade Commission, Institute of Directors (IOD), the board of the year 2002 selected by IOD and other qualified persons. The Office of the Securities Exchange Commission is grateful for the support of all of the aforementioned organizations. We hope that this handbook will enable you to exercise your duty correctly and completely.

Director’s Handbook

Volume 2

Practice guidelines for directors

The Office of the Securities and Exchange Commission

January 2007

Contents

Part 1

Guidelines on Being a Director

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Guidelines on Being a Director

General guidelines

The board of directors has the power, duty and responsibility to operate the business of the firm for shareholders with care and loyalty to preserve company interests. The board reaches decisions jointly, (not dependent upon on a single member's decision, e.g., chairman, major shareholders, or chief executive officer). Everyone on the board shares equal responsibility.

The director's role is neither to centralize power nor to be a rubber-stamp waiting to approve whatever actions management proposes. On the contrary, your role is to jointly think, work and be jointly responsible for operating the company for the best interest of the shareholders.

To create the best value for the shareholders you should effectively monitor management and its accountability to the company and shareholders. You should at least take the following actions:

Prepare for a director's duties by:

- Clearly understand the nature of the company's business, to oversee opportunities, risks, and business issues.
- Follow-up on related news and information and consider any impact on the company.
- Actively seek knowledge concerning the duty and responsibility of directors, including attending training courses available for directors, e.g., those arranged by Thai IOD (Institute of Directors)[1].

Attend board of directors meetings with attention and diligence

- Attend every meeting unless your absence is inevitable. As the shareholders appointed you personally to be a director, you should not delegate others to attend meetings for you.
- Study the agenda before attending and double-check information given to you by using sources other than those provided with the agenda in order to be proactively able to carefully consider the issues. (This means that you should have the secretary of the board give you the agenda with adequate details and information well in advance of the meeting. Having those documents will help in demonstrating that you have done your duty with due care based on a 'having been fully informed basis').
- Raise searching questions on important issues so that you will receive accountability and credible information.
- Disclose to the board whether you, directly, indirectly or on behalf of third parties, have a material interest or conflict of interest involved with the matters to be considered. You should inform the board of such interests or conflicts in writing and should be absent from the meeting

[1] Thai Institute of Directors Association, Tel.02-264-0870, website http://www.thai-iod.com

when it considers the matter. (If you have additional information of use to other directors, the board may request you to provide that information. However, you should leave the meeting when the board decides on the issue so that the board can exercise an independent judgment for the firm's best interests).

- Consider resolutions in the light of the firm's best long-term interests and be able to answer any questions if the matter is audited afterwards.
- Ensure that the minutes of any meeting are recorded in writing correctly and completely. If you disagree with any resolution, upon your request such disagreements should be minuted, along with your reasons. If you fail to have your objections minuted, you may have to take legal responsibility for that resolution together with other directors.
- If you are not able to attend a meeting, you should follow-up on the agenda of the meeting. If you have a different opinion from that of the other directors, you should so notify the chairman in writing within three days after the meeting in order to ensure that you are not held responsible for the matter later.

Miscellaneous

- Find an opportunity to be acquainted with, develop good relationships and seek opinions from the lower management levels in order to follow-up, update yourself, or to request information which may assist you to perform your duty. You may explain your actions to management in advance why a certain action was taken and that it was not intended to interfere with their work.

If you rigorously follow the above guidelines, you should feel comfortable that you have done well in your duty as a director. If any mistake occurs, you may be safe and may not be responsible personally.

Part 2

Guidance on Corporate Strategy

Part 2
Guidance on Corporate Strategy

Principle

Shareholders naturally focus on their return; therefore, the most important role of directors is to ensure the strategic guidance of the company. As mentioned in handbook volume 1, the role includes:

- Selecting, compensating, monitoring and, when necessary, replacing key executives, and overseeing succession planning using appropriate influence measures.
- Developing corporate strategy; setting performance objectives, including annual budgets, with management.
- Ensuring formal and transparent board nominations so that the board can follow-up on operations and decide on important matters.
- Setting criteria for executives to achieve targets and a performance management system.
- Providing risk management control.
- Following up on operational results to reach targets.

Guidelines

This handbook will mention only the principal guidelines on the board's role. Details vary from company to company, depending on guidelines or administrative theory that the company deems appropriate.

Selecting and monitoring key executives

- Since the board is responsible for the company's entire operations, it has the duty to select qualified and accountable persons capable of maintaining good relationships with the board for executive positions.
- The board shall oversee the said executives in achieving business targets by providing suitable remuneration schemes to the positions, which are comparable to others in the same industry.

  SET has a remuneration policy statement covering board members and key executives of listed companies in each industrial sector so those companies can evaluate their own compensation packages. More information about remuneration can be found in the information disclosure form and annual report.
- Selecting directors from major shareholders or from their own families to be key executives is not inappropriate. It is possible if the person is qualified, capable, and suitable, but the board needs a follow-up scheme and evaluate such individuals independently in the same way as they do with directors selected from outside.
- Even if the company has suitable executives, the board shall oversee succession planning. In addition, sufficient systematic operational support shall be provided to avoid dependence on individual knowledge or the experience of only one person.

- The board shall agree with executives concerning the method and elements in evaluating their performance seriously and independently.

Guiding corporate strategy, setting business targets and following-up

- To ensure that business operations of the company comply with the guidance to protect shareholders' interests, you should create the business target and business plan, including corporate budget, at least annually.
- Important business targets and plans should be arranged and approved by the board and management together so that such plans will be accepted and carried out.
- Business targets and plans should be clear and contain measures for evaluation, but corporate management should be flexible enough to improve upon and adjust targets to various situations.
- The management shall report regularly on realized results of business operations vis-à-vis targets to the board. If results deviate significantly from expectations, the board should seek explanations and solutions immediately.
- The board should set a system for management to report any circumstance which may significantly impact the company's reputation, business operations or financial status (e.g., , being sued by regulators or internal fraud) to the board in order to resolve the matter.

Part 3

Following-up on Corporate Operation

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3.2 Internal control and risk management
3.3 Remuneration for directors and management
3.4 Employee stock option plan (ESOP)

Part 3
Following-up Corporate Operation

3.1 Corporate disclosure

Concept

If you are appointed as a company director, but you will be neither able to access sufficient information concerning the nature of the business nor follow-up on corporate operation result, should you accept the position?

Investors, like you, are unlikely to feel confident in investing in a company where they could not trace how their money is being used or find out how their investment has grown. Such a lack of information would result in a lower stock price and damage the firm's business value.

Therefore, proper disclosure of information is important, and can be used to create accountability and business value. Even though it entails corporate expenditure, you should not assume that the expense is a burden. On the other hand, the expense should be considered as an investment in developing business value for shareholders.

Disclosure of information is important for major shareholders, directors or executives for following up on operations of lower-level employees. If you strongly demonstrate to employees that accurate disclosure of information is important, they would increase their efficiency in showing performance with care. This will also help reduce internal financial leaks in the organization.

What information is to be disclosed?

The main purpose of disclosure is to provide information to shareholders to assist them with two kinds of decisions. First is their investment decision (including following-up on results), which depends on the rules prescribed by the Securities and Exchange Act. Their second decision is to vote in general meetings of shareholders. Details of the agenda are provided in the notice of the meeting, according to the Public Company Act (as explained in handbook volume 3).

According to the Securities and Exchange Act, disclosure will provide investors with sufficient basis to make decisions; such information is of four types:

1. Financial reports: These consist of annual and quarterly financial reports showing the financial and operating results of the company, being reviewed or audited, as the case may be, by SEC-approved auditors. The company has a duty to provide accurate financial reports and to cooperate with the auditors in performing their duties.

2. **Annual information disclosure form** (Form 56-1): This form shows information that investors should have about the company (e.g., type of business transactions, shareholders and administration structure, explanation or analysis of corporate financial status, operation, future plans and risk factors).

3. Annual report (Form 56-2): This report provides similar information to Form 56-1, but is used for a different purpose. The board has a duty to execute and deliver an annual report to the shareholders before the annual general meeting. Shareholders are to use such information to follow-up on the operational performance of the board, consider appointments and re-appointments of directors, and determine remuneration for the directors.

However, Form 56-1 is used for general investors, and can be accessed through the website or the Office of the SEC and the SET. Form 56-1 is not related to the annual report which the company may send to its clients or business partners. However, the company may use the same copy as presented to the shareholders.

4. News on significant changes: The three types of information above are usually issued on a scheduled basis. However, the company shall immediately disclose any important change which may impact its securities price (e.g., cessation of business operations, change in business transactions, sale or purchase of important assets, and changes of executives.).

Details are provided in Appendix 1.

How should the firm conduct a "good" disclosure?

Information provided for making decisions shall be:

- Accurate, true and shall not cause any misunderstanding.
- Complete, sufficient, and contain essential, non-confidential information.
- Updated and delivered on time.

Who shall be responsible for the disclosure of information?

Having someone gather information for you does not release you from being responsible for its accuracy, completeness and timeliness.

Whether you are a managing director, who is able to access all corporate information, or a financial director, you have a direct duty and personal responsibility to make systems available to shareholders, file documents, keep evidence and records, update accounts accurately, and provide data to investors.

However, the law states that directors shall be liable (personally) to shareholders and related persons for any damage caused by providing inaccurate financial and operating results of the company. In order to ensure that the disclosed information is accurate, you should monitor the following issues:

- Monitor the company's accounting, filing and database management systems to record significant information accurately, completely and in auditable format.
- Ensure that a SEC-approved auditor is available to audit and give an opinion about the financial report.
- Ensure that corporate financial reports and disclosure information do not contain inaccurate or incomplete information.

A director who is not on the executive committee should carefully monitor the issues to protect himself from personal liability.

The board may appoint an audit committee to inspect the above issues, but the board is still responsible to the shareholders because the audit committee was appointed by the board. Therefore, the board shall support and empower the committee to work to its best endeavors and be able to access all needed information. The committee shall summon employees to provide additional information and be able to hire expert consultants for additional opinions, and have employees follow-up regularly, search for information, and co-ordinate with others to help the Committee. If the committee reports weak points in the system, the board shall consider finding solutions.

How to disclose accurate information?

It is difficult to tell the extent to which information is accurate unless you are the one who is managing the company. A tip for solving this problem is to have the responsible executive sign to certify that the information given is accurate and complete. In this case the executive is accountable, and you may feel more comfortable in approving the information. According to the SEC's rule, whenever an executive signs to approve information, it is assumed that the information is correct and the directors are acting on a fully-informed basis.

Suspicious that the disclosed information may be inaccurate.

If you suspect that the information might be inaccurate, but you still certify the information, then you may be regarded as being careless in performing your duty and may be liable for results. There are points to focus on in requesting additional information, for example:

- **Audit report**: You should note whether or not the report expresses an opinion with or without condition(s) and whether there are notes on important matters (e.g., failed to meet the accounting standards, did not obtain full cooperation from an executive, insufficient allowance for doubtful accounts). If the auditor's report is difficult to understand, feel free to ask for more information from the auditor or audit committee.
- **Changes in significant accounting policies**: Those who are not accountants may feel that numbers recorded in the accounts should be precise. However, in practice, recorded numbers are based on estimates (e.g. depreciation, allowance for impairment of assets, allowance for doubtful account etc.) Moreover, issues concerning when to record assets, debts, revenues and expenses in the account and when to remove them and how much value should be recorded are also debatable.

Investors are impacted by the above issues, because they would expect revenues deducted by expenses and they would mainly look at the profit shown in the account. Therefore, in recording the accounts, it is necessary to have an ***accounting standard*** so that the financial report can be compared. The company should disclose its ***accounting policies*** by stating how the company will record financial changes in each case. The selected policy should be based on consistency and a conservative basis.

As a director, you are not expected to know all the accounting standards, but you must know that some accounting policies materially influence financial status and corporate performance. The selected policy should be used on a consistent and conservative basis. If there are any changes on the selected accounting policy, you should question it to ensure that the changes are suitable and the company is able to display a credible financial status and operating results. Information about accounting policies changes can be seen on notes to financial statements. Generally the auditor will usually raise issues to be scrutinized in the auditor's report.

In addition, members of an audit committee should learn thoroughly about the nature of the business and corporate risk. Furthermore, you should review the present corporate accounting policy to determine its suitability.

- **Significant changes to financial figures**: The financial report is always shown in comparison to the previous term. Form 56-1 also shows financial ratios with explanations. If there were any significant changes, you should question and consider whether such changes are in line with the corporate plan, budget and approved projects. This will also help directors to review the plan's suitability. You should pay attention to any special item and explain it in Form 56-1, because investors will always have the same doubts as you do.

- **Conflict of figures in financial reports**: A financial report consists of four important parts, as follows:

  - **Balance sheet**: shows figures representing the status of the company, which consist of assets, debts, and shareholder equity on the date specified in the balance sheet;
  - **Profit and loss sheet**: shows figures of operational results in the previous term;
  - **Cash-flow sheet**: shows sources of cash being received and cash being used;
  - **Shareholder equity changes sheet**; and
  - **Notes to the financial statements**: shows details and additional explanations of the financial report.

If there is an apparent conflict between the figures, the director should find the extent to which the company has reasonable grounds for the figures shown.

- **High volume of connected transactions**: these transactions are identified in the Notes to Financial Statements and Form 56-1 because those approving the transaction may have had a conflict of interest; therefore, this transaction may not be fair for general shareholders (e.g., having unfair transfer pricing).

If the company has a high volume of connected transactions, you should review whether those transactions are normal or have been approved by the board. You should check whether the price is fair compared with or is different from the price independently transacted with third person. As an audit committee member, you should see whether the actual transactions are in compliance with conditions approved and disclosed by the board, using random verification.

The above issues will help you make queries and find out suspicious information. You should pay more attention on other issues considered as an individual risk to the company. The most important thing is that when you find any suspicious information, you should request clarification. If such clarification is not convincing, the information should be corrected and be supported with an additional opinion from the auditor.

Although the above operations will not ensure accuracy of all the information, they will protect you from personal liability since you have taken sufficient care to ensure that the disclosed information is reliable.

Where are sources of information?

You may not only verify figures in the financial report, but also seek information from the following sources:

- **Discuss with the auditor**. Directors appointed on an audit committee should discuss with the auditor before the official report has been issued. You should ask for the auditor's opinion concerning:
  - Sufficiency of internal control. You should ensure that evidence is available and accurate.
  - Suitability of accounting policies
  - Cooperation that the auditor obtained in performing his duty and other-observation.

The auditor will always provide a report for the company which contains more details than the disclosed financial report. Therefore, an audit committee should request such a report.

If you find that the auditor has raised issues, you should take into consideration that the auditor is a professional to assist you to inspect the correctness of the financial report. You should adjust the financial report, accounting system and internal control to be more suitable as advised by the auditor. The audit committee should record its discussions and operations in the inspection report.

- **Audit committee report**. Directors who are not on the audit committee should study the audit committee report presented to the board in detail. If there is an issue to be discussed, everyone should help to clarify it; do not think that this is only the audit committee's duty. The audit committee has done an initial inspection for the board, but the responsibility still belongs to the board.

- **Discuss company matters with internal control, accounting, financial or other officers**. You should associate with those officers and provide sufficient security and confidence that they will inform you of any suspicious aspects or weaknesses in the systems.

- **Meet and discuss company matters with investors and investor relations officers**. After such discussions, you should understand more about needs and expectations of investors. By gaining such information, you can provide positive responses to investors, who are the owners of the company.

3.2 Internal control and risk management

Concept

In monitoring management’s operations to meet targets, policies or plans laid down by the board, even if you, as a director, are not able to watch over the entire operations by yourself, you are able to support the firm’s having an internal control system and risk management by ensuring that:

- The operation or performance of any undertakings are efficient, effective and in line with policies, regulations or corporate strategies, including related laws and rules.
- Corporate properties are taken care of, protected, and are ready for use without any outflow or waste. Moreover, the properties shall used only for company benefit, and with authorization.
- Financial reports are prepared reliable.

In the past, some companies focused their internal control on specific points, but such specific control may not be enough to cover the entire risk, and the company may thus be incapable of achieving targets. Therefore, internal control systems and risk management are closely related and both should be encouraged in every level of the organization. Insufficient internal control may lead the company to collapse, as has happened to even large size businesses.

Related rules

At present, there is no specific law or regulation for internal control, but it is the duty and responsibility of the board to provide sufficient and appropriate internal controls to preserve the interests of the company.

SET regulations state that the board has the duty to review and give its opinion concerning the sufficiency of the internal control systems. Such an assessment shall be disclosed in the information form and annual report. However, nothing is able to indicate level of “sufficiency” since it depends on judgment and varies by company. Therefore, as the audit committee was assigned by the board, the board is still responsible for, and should pay attention to, the matter.

Guidelines

In arranging corporate internal controls, you may not be able to control all risks at the same time. To set up a system or review sufficiency of internal controls, you should start by assessing at which points the company may have high risks of not being able to achieve targets. You should control such points to be at an acceptable risk level.

A good control system should consist of a balance between flexibility in operations and well-conceived internal controls. You may use the following guidelines in setting up an internal control system:

- **Appropriate organization structure**: a good structure should focus on cross-checking. For example, in a property transaction, different people should be responsible for the authorization of transactions, information entry, and property management. In addition, each of the internal sectors shall have specific duties and responsibilities, with written business operating rules. These structures shall ensure that each transaction has verification procedures in authorization and information entry without causing overlapping in performing any of the functions and work.

- **Risk assessment approach**: This risk assessment approach shall apply to the entire organization and shall be able to identify which systems have high risk tendencies, the extent to which a given system may damage the company, the probability of risky events occurring, and the extent to which there is sufficient protection.

- **Provide a follow-up system**: Internal control and risk management shall be provided at least for every system that has a high tendency of risk together with high impact and high probability. The system should have a risk control policy together with an early warning indicator. In addition, it should set up good information compilation and report systems, including personnel to follow-up on the early warning system. Moreover, you should oversee operations to ensure that personnel consistently follow-up on the system.

- **Assessment**: After setting up the internal control and risk management systems, you should regularly go through self- assessment to ensure that they are still efficient and have been revised according to any circumstantial changes. In addition, the company should have an independent individual, who is free from internal influence control and to follow up the assessment and provide independent comment on the system.

- **Implementing suggestions**: If there are comments or inspections relating to mistakes found by the auditor or audit committee, the board shall pay attention to the comments and shall improve and correct them promptly. Besides, you should provide employees connected to the system with a convenient route to inform executives of any system deficiencies.

Additional guidelines can be found in the Handbook for directors produced and published by the SET, e.g., Guidelines for Directors Concerning Internal Control and Risk Management. In addition, you may use the evaluation form of sufficient internal control (available at www.sec.or.th) to be your guideline in self-evaluation.

3.3 Remuneration for directors and management

Concept

Remuneration for key executives and directors is an important tool in searching for persons with expertise and capability to fit in the positions, retaining personnel resources and motivating them to achieve targets. But setting remuneration may be connected transactions because directors or management have direct conflicts of interest on the matter. (However, such actions are not "connected transactions" as defined in SET's regulations.) Therefore, the remuneration given should be appropriate with the position, duty, responsibility and performance of each key executive and director. In addition, remuneration shall be considered or evaluated by others who supervise the given person, and shall not be done by the one who receives the remuneration himself.

"Remuneration" can be in form of salaries, premiums, gratuities, bonuses, employee stock option plans (ESOP), provident funds and other benefits.

Related rules

There is no specific rule in setting the amount of remuneration, but there is a process to consider remuneration, as follows:

The Public Company Act mentions only remuneration of directors, and does not include remuneration for executives. Important provisions are:

- The Act prohibits the firm from paying money or other assets to directors unless considered as remuneration, as specified in the articles of association of the company.
- If the articles of association of the company do not specify anything, remuneration shall be made upon receiving the approval of 2/3rd of the shareholders attending shareholder meetings.

SEC Announcements do not mention the method of determining remuneration, but related issues are:

- Issuing of employee stock option plans (ESOP), which will be explained more in the next item.
- Disclosure of information on total remuneration of directors, executives (which means the top five or equivalent), and numbers of those persons.

SET Regulations provide only advice, mentioned in the report of good governance, that remuneration of directors and executives shall be determined by independent individuals. A committee determining remuneration may also be established to perform such duties.

Guidelines to determine remuneration

Who should determine remuneration?

Remuneration for Directors: The directors perform as delegates of shareholders and for their best interests. Therefore, the best practice according to the Public Company Act is to propose remuneration for the directors in form of money for approval at the annual shareholder meetings, so that the shareholders are able to set remuneration suitable for the firm’s circumstances. It is also a mechanism to encourage and enhance accountability by directors.

However, in practice, one may feel uncomfortable in proposing remuneration (regarded as personal information) to shareholders (regarded as public) to consider. You may choose another guideline as allowed by the Public Company Act to set a framework of remuneration for directors in the articles of association of the company. In this case, you do not propose “money” for shareholders’ consideration, but rather a “rule”.

In setting rules in the articles of association, you should ensure that such rules are flexible enough to be varied along with the board’s performance. Simultaneously, it should be clear enough so that the board does not decide on its own remuneration; for example, it could set the exact amount of directors’ fee or a gratuity for directors as a percentage of net profit. The amount of remuneration shall neither be set to the highest amount nor be paid by the resolution of the board, which may cause the board of Directors to determine its own remuneration. The said rule should be periodically reviewed.

Remuneration for executives: As a board member, you should either participate in determining this issue in the board meeting (the executive being assessed does not attend), or delegate the duty to a remuneration committee. For the best benefit of shareholders the board shall use this method in selecting and retaining quality executives, including developing and encouraging such persons in achieving their goals.

Form of remuneration

Remuneration can be divided into two parts:

- Fundamental remuneration (e.g., directors’ fee and directors’ salary) shall be determined in advance and shall reflect responsibility and risk taken for a given position (e.g., chairman of the board, audit committee, or executive).
- Rewards (such as bonus, gratuity for directors, ESOP) shall be varied dependent upon the value developed by the board of directors and approved by shareholders. It may be proposed at shareholder meetings for consideration the following year together with the annual report and assessment. Alternatively, it may initially be determined as a formula (e.g., bonuses for directors shall be x % of the net profit, and allow the board to determine the proportions among themselves).

Setting a part of the remuneration to be determined by the company’s operational results has the advantage of ensuring good operational results. But if the said part was set at too high a proportion, it may motivate directors and executives to be concerned about the company’s interest only in the short, rather than the long, term. Therefore, you should seek to balance both short- and long-term interests.

Moreover, you should consider the following factors in determining each kind of remuneration:

- Consistency with remuneration in the same industry

- Scope of responsibility
- Financial status of the company
- Consistency between a performance assessment scheme and achieving company targets.

3.4 Employee stock option plan (ESOP)

Concept

ESOP is an important method in creating a sense of ownership among directors and employees. It also motivates them to work for the long-term benefit of the company and develops co-interest between shareholders and business operation staff.

ESOP is considered as a kind of remuneration; therefore, the same concept and same determining guidelines apply as above. The cost of issuing ESOP will not show as an expense that affects company's profits and losses, but will increase the number of shares and result in a dilution of a company's shares. Therefore, you should use this plan as a motivation for directors and employees to achieve better operation results and to increase the value of the shares being diluted.

Related rules

The concept is regulated in the SEC notification on rights to buy newly-issued shares (either giving the right to buy immediately or issuing warrants). The process has to be approved by SEC under the following principles:

- **Approval**: In giving such right to directors and employees, shareholders are impacted from the dilution; consequently, it shall be approved at a shareholder meeting. The notice of meeting shall provide sufficient information to shareholders for their consideration (See: Rules about minimum information provided in handbook volume 3).

- **Approval for extraordinary rights:** In order to provide directors or employees with other rights other than warrants to increase their motivation, the board may give the rights to buy shares at a price lower than the current market price (directors or employees will promptly earn the balance between the discounted and marked prices; thus the impact on the long-term commitment of the staff is lessened). If the amount of shares offered at a discount price exceeds 5 (five) % of the total number of shares, the plan must be approved by a resolution under strict conditions, that is, at least 5% of the shareholders are entitled to reject the plan.

- **Distribution to directors:** Distribution of rights of each individual director shall be approved by a shareholder meeting to avoid a conflict of interest. Instruments or rights offered to directors shall not be different from those offered to employees (though the number of shares may vary).

- **Allocation of shares:** In order to protect shareholders in case more than 5 (five) % of the total shares issued are sold at a discount to a single person, the sale must be considered by an independent remuneration committee, and such a sale must be approved separately by a shareholder meeting. All remuneration of such persons shall be disclosed as information for consideration.

- **Expiration of rights:** Because the price of offered shares is set in advance and the stock prices fluctuate, such rights offers shall expire within five years to motivate directors and employees to improve operation results within that period.

- **Qualifications of issuing company:** The firm issuing shares shall follow the general regulations regarding increase of capital.

Guidelines to determine ESOP plans

As a director who proposed the ESOP plan, you should provide your comments to shareholders, but the plan still must be approved at a shareholders' meeting. Therefore, the following factors shall be considered:

- **Type of securities:** Most companies will select options to buy warrants over shares because, upon receiving shares, directors and employees will possibly lose their motivation and may sell those shares immediately. A prohibition to sell would mean that the employees take the risk of paying cash in advance without the option to sell the shares. Also, while waiting for directors or employees to exercise their rights, the shares shall be held by an intermediary. So there are problems in paying for and keeping the initially-issued shares. Warrants, on the other hand, are free from these obstacles.

- **Price of exercising rights:** The exercise price shall not be lower than the market price on the date of issuing the ESOP to motivate directors and employees to perform better. Giving rights with discounts shall be done only when necessary, e.g., if the company has no cash to pay salaries (in accounting practice, GAAP guidelines are being considered to consider such discounts as expense, similar to salary). It shall be explained clearly to shareholders that the lower the exercise right is, the stronger the impact from dilution will be to shareholders (the book value per share decreases).

- **Size of plan**: Where there are more right issues, more impact from dilution will follow. The plan's size depends on the following factors: number of employees entitled to receive shares; structure of compensation; type of business, etc. However, in general, the number of shares under the ESOP shall not exceed 5 (five) % of the paid-up shares of the company.

- **ESOP distribution** As it is part of remuneration, ESOP will follow the same guidelines that apply to paying remuneration for directors and executives. If different guidelines are used, the reasons and necessities shall be clearly explained to shareholders, especially to major shareholders. This process, therefore, must be considered carefully and independently, because it may bring about conflicts of personal interest.

Part 4

Consideration of Important Business Transactions

4.1 The sale and purchase of important assets
4.2 Connected transactions
4.3 Issuance of securities due to the increase of capital
4.4 Takeover

Part 4
Consideration for Important Business Transactions

4.1 The sale and purchase of important assets

Concept

Whether it is buying to expand the business, selling to decrease its size, searching for financial sources, or for other reasons, the sale and purchase of important assets affects the company and its shareholders. It may affect the type of remuneration, operational risks, and/or the company's financial status.

In business practice, you may consider the above issues as a business decision, which is management's duty to execute for the best interests of the company. Some issues are confidential. However, shareholders will be directly affected, so they should be involved in the decision-making process when the impact is significant. Even if the matter does not need to go to the level of a shareholder meeting, you, as a director, should make the decision by yourself rather than having the management decide the matter alone.

Related rules

The Public Company Act prescribes that the following sales, purchases or lease of businesses are considered essential parts of the company and shall only be granted upon by a vote of at least 3/4ths of the shareholders who attend the meeting and have the right to vote (unless otherwise requiring a larger majority as prescribed by the company's articles of association):

- The sale or transfer of the whole or important parts of the business of the company to other persons;
- The purchase or acceptance of the business of other firms by the company;
- The making, amending or terminating of contracts with respect to the granting of a lease of the whole or important parts of the business of the firm, assignment of management of the business of the company, or the amalgamation of the business with other persons with the purpose of profit and loss sharing.

Regulations of SET. The Exchange's regulations for listed companies and their affiliates have expanded and are more precise than those stated in the Public Company Act. These regulations give more importance to sale and purchase of assets, including the decision-making process involved in entering into such transactions, with actions to be taken being dependent upon the level of importance of the transaction. The main principles are:

- **Authorization of transactions**

    - Small transactions (less than 15% of transaction volume[2]), with a plan to issue securities as remuneration, are allowed. The company is only required to disclose information to SET (each firm may determine the level of internal authorization allowed).
    - Medium transactions (between 15% and 50% of transaction volume are allowed, but the company shall disclose information to SET and inform shareholders.
    - Large transactions (over 50% of transaction volume) shall be approved by shareholder meetings before they are carried out.

- **Evaluating the value of transactions.** In considering the transaction volume, it shall be evaluated accordingly. The listed company shall consider the volume of transactions, which the maximum volume shall be applied on the following bases:

    - Value of assets purchased, sold or transferred, vs. the value of assets shown in the consolidated balance sheet.
    - The total value of consideration paid or received, vs. the value of assets shown in the consolidated balance sheet.
    - The net after-tax profit derived from the assets purchased, sold or transferred, vs. net profit shown in the consolidated balance sheet.
    - Value of securities issued in exchange, vs. the value of securities already issued.

Guidelines to determine transactions

The sale and purchase of important assets or businesses affects business risks and company operations. To ensure that you have done your duty with sufficient care, and ensure that you will be safe from personal liability whether the project is successful or not, you should:

1) Pay attention to all details
2) Decide or propose your opinion to shareholders with sufficient supporting information, and
3) Record the information with your reasons for decisions or propose your opinion precisely to shareholders in the minutes of the shareholder meetings and in the notice for shareholder meetings.

Moreover, you should review the power of attorney given to your company's board and management to ensure that approval for the sale or purchase of important assets has been approved by the board.

[2] Notification of the Board of Governors of the Stock Exchange of Thailand, Bor.Jor./Por. 21-00. Re: Disclosure of Information and Other Acts of Listed Companies Concerning the Acquisition and Disposition of Assets, 2004, Section 2, Clause 7.

Factors to be considered

In purchasing any property, issues about the possibility and appropriateness of the investment are inevitable, e.g., issues in marketing, production, procurement, management and finance. If you have to decide without proper information or based on assumptions, you should carefully consider the circumstances to ensure that those assumptions are reasonable, accurate, likely to be true, and are related to present facts.

In selling property, issues to be considered are similar to the above, but on the opposite side. You should consider which should be more useful for the business: selling property outright or maintaining it for company use.

However, another important issue to consider in the sale or purchase of property is that you should consider how the transaction would impact the entire business of the company. Some projects seem to be good but eventually may cause the company financial risk or otherwise negatively affect the entire business.

Besides the project or guidelines proposed by the management, you should look into any other options and see whether the project complies with the target or vision of the company, or whether it is best option for the circumstances at that time. Again, for these important issues, please do not forget to look at the minutes of the meeting to see if it covers the questions or answers, together with reasons to make the decision accurately. If you feel uncomfortable with it, you should request to record this in the report, which will be evidence to help you stay clear from liability.

4.2 Connected transactions

Concept

As mentioned in handbook volume 1, directors must act with care and a loyalty to preserve company interests. Having conflicts of interest with the company may obstruct a director from making decisions that are in the firm’s best interests. As a result, other shareholders may claim indemnity from the director for unfair treatment.

Entering into a transaction where directors or executives are the decision-makers and have a conflict of interest may lead to an abuse of authority by exploiting investor’s money for others’ own interest and accordingly take advantage of investors. (The SET calls such activities “connected transactions”; in accounting they are referred to as “inter-transactions”). Thus, such transactions are mostly distrusted by investors -- especially in a company which has a weak checks-and-balances system, which will enable someone to control nearly all decisions. In such cases, directors who do not oversee or object to the transactions may be liable, together with the director who had the conflict of interest.

Therefore, as a director, you should always oversee the operation of transactions with care. You should conduct connected transactions only when:

- **Substance of the transactions is fair**. That means the transactions are reasonable and for the firm's best interests. Also, conditions of the transactions are the same as, or similar to, transactions on an arm's length basis.
- **Procedure of the transactions is fair**. That means transactions shall be approved by disinterested persons. The decision-making process shall be transparent, open and accompanied by sufficient disclosure of information.

In dealing with transactions, you should bear in mind that you are managing the shareholders' money. As you were trusted, you should manage the money in the best interest of the owners.

Rules relating to connected transactions

The Public Company Act: This Act contains both prohibitions and provisions that require permission to act, as follows:

- Companies are prohibited from granting loans or guarantees to, or purchasing promissory notes from, a director or a company in which a director holds 50% or more of the total number of shares, excluding welfare loans.

- Directors are prohibited from purchasing or selling property to the company or conducting any business with the company, regardless of whether it is in his own name or in the name of another, unless approved by the board of directors; and such purchase, sale or deal shall not bind the company.

- The director shall notify the company without delay about having an interest in any contract made by the company or when there is a change in the quantity of shares held by the company.

Regulations of SET provides broader definition on connected transaction than that stated in the Public Company Act. (The Public Company Act covered only transaction with directors.) The main regulatory principles are:

1. The term "connected person" means: Persons who may have a conflict of interest and may affect decisions among the directors or executives. This includes directors, members of executive committees who are department managers or higher, major shareholders and individuals related to such persons, including their close relatives or a company in which such a person is a director or major shareholder.

However, affiliates or associated companies of the company (where none of the connected persons involved holds more than 10 (ten) % of shares issued) are not connected because the interest of affiliates is a direct interest to the holding company and shall not cause a conflict of interest. Therefore, transactions with these companies are not under the umbrella of this provision.

2. Categories of connected transactions: These cover all transactions between a company and connected persons. However, provisions concerning each category of the transactions differ, depending on the "usual" course of transactions, as follows:

- **Purchasing or selling of goods or services in the ordinary and usual course of business, including supporting ordinary business**. Management is able to operate transactions which comply with normal commercial terms or which contain property with underlying value.

- **Renting or leasing of immovable property not exceeding three years**. Transactions can be entered into with the approval of the board of directors, despite being large transactions.

- **An assets or services transaction**. These are permitted under the conditions set out in item 3 below of the shareholders' protection scheme (below).

- **A financial assistance transaction**. In providing financial assistance in the ordinary course of business, the same rule as the above on assets or services transactions should be followed. However, if lending money to any party whom the company generally should not lend or otherwise provide financial assistance since such actions may cause unfairness to general shareholders, the firm should follow a more intensive rule, with prior approval from shareholder meetings. This includes lending money to major shareholders, director, executives or a company that such person holds higher ratio of shares than the company.

3. Shareholders' protection schemes: These are based on the principle that a person with a conflict of interest should not approve the transaction concerned. The level of approval depends on the value of the transaction, which is divided into three categories:

- **Exemption level**: Management is allowed to make decisions at its own discretion. Most are small transactions of not more than THB 1 million or 0.03% of net tangible assets (NTA), whichever is higher. The company shall gather the information to be disclosed in the annual report.

- **Level requiring board of directors' approval and disclosure**: Value of transactions between THB1 and 20 million, or between 0.03% and 3% of NTA, whichever is higher. However, the scheme will be stricter in case of financial assistance provided to a party it generally should not provide such assistance. Then, the company needs the board approval and disclosure when the amount is up to THB100 million or 3% of NTA, whichever is lower, otherwise approval from shareholders is required.

- **Level requiring shareholders' approval with opinion of financial advisor** (unless otherwise granted by SET): Transactions valued at more than the above cases require a resolution of not less than 3/4ths of the total number of votes of the shareholders with voting rights attending the meeting. Persons with conflict of interests shall not have the right to vote.

  In addition, there shall be comments from the board of directors justifying and outlining the company's benefits in proposing the transaction for the shareholders' approval. Any audit committee members or any director who has a different point of view shall inform shareholders for their consideration.

4. Guidelines to consider approval of connected transactions: Whether you are a member of the audit committee or a general director, you should approve a connected transaction only if you have considered the following issues:

- **Ask yourself, in the same situation, whether or not you would enter into the transaction with one who is not a connected person**. If the answer is "no", then you should not approve the company's proposed deal with the connected person (e.g., the company does not operate a loan business and the company will reject the application if others want to borrow. As a result, the company should not provide a loan for a connected person that is outside the ordinary course of business of the company.).

- **If you think that you should still enter into the transaction, you should look at the transaction's details, seeing the extent to which it is reasonable and beneficial for the company**; for example:

  - **Proposal to purchase land from a connected person**. If the land has no potential use for the firm, you should not approve it, because this will increase the non-earning assets of the company unnecessarily.

  - **Request for loan or for guarantee from a connected person**. You should consider (1) the probability of receiving return payments, source of funds and extent of potential risk; (2) factors that may affect cash flow, obligations and financial risk of the company after giving such loan or guarantee, and (3) the extent to which the company has guidelines to pursue and demand repayment, possibility of receiving repayment from the person in question. If the company would not seek repayment from that person, then you should not approve the loan.

- **After considering the two issues above, you should consider whether or not the price and other conditions are reasonable and appropriate**. You may:

- Compare the purchase or sale (or similar transactions) with a third party.

- If there is no market price for the sale or purchase, you should refer to an opinion from an expert in that area (e.g., financial advisors for financial assets or property assessor for land purchases).

- In loan transactions, you should review the cost of capital of the guaranteeing company and the risk of not receiving repayment on schedule in order to fix the interest rate. Setting a high interest rate would be useless if the borrower has no capacity, or no intention, to repay.

The above guidelines shall be used for situations where you are the one approving the transaction and require shareholders approval. Furthermore, as a director, you should propose your comments and recommendation to the meeting. You should review the Meeting Notice before it is sent out to ensure that it contains sufficient information for shareholders to decide (details are in handbook volume 3).

Besides the connected transactions explained above, a director may have other actions causing a conflict of interest, so the director may not perform his duty with loyalty and care to preserve the interests of the company. For example, the director may:

- Operate a business which competes with the company (including becoming a director in a firm in a similar type of business), which Section 86 of the Public Company Act prohibits, unless he notifies a shareholder meeting prior to the resolution for his appointment.

- Invest in a business similar to the company's by using the opportunity or information of the company for his own interest.

These transactions are mostly individual breaches of duty of the director and should not be supported. The board of directors is responsible for determining the business strategies, including seeking and maintaining opportunities to expand the company business.

4.3 Issuing securities from capital increases

Concept

Fund is like the main blood vessel of the company and keeps the business going. A high ratio of shareholders' equity will reduce financial risk and enable the company to reduce borrowing costs. This is one of the factors that benefits and brings stability to the company.

However, capital increases bring about additional shares (which means less value per share), so as a director, you want to create the highest value for the business and shareholders as possible. You should consider why the company needs extra money, the likely profits/benefits from the project, possible risks to the company and to the shareholders, and alternative sources of funds. Moreover, issuing shares from a capital increase will dilute shareholders' value (e.g., net earnings per share, book value per share, or voting right per share). Therefore, you should only issue more shares if:

- The reasons for needing additional money The objectives of the capital increase and plans for utilizing proceeds received from the capital increase are clear and are likely to increase future profits as well as add value to the company.

- The price offered for sale shall not be less than fair value, so that the value per share of owner's equity will not be lowered unnecessarily.

- There is proper allocation and it shall not be a channel for anyone to obtain control over the company, unless for the firm's interest, with shareholders' prior approval, and if the information is completely disclosed and the stakeholders do not exercise their voting rights.

Related rules

The offer of securities for sale issued for a capital increase, whether it be shares, warrants or convertible debentures, shall be approved by a shareholder meeting. It shall also follow the Securities and Exchange Act. The rules of the SEC relating to authorization and information disclosure differ according to the type of sale offering. The main purposes of such rules are to:

- **Ensure fairness to current shareholders** who are impacted from the increase of capital, by allowing such persons to decide with sufficient information to exercise voting rights. The rule also aims to protect a rights offering which causes unfair dilution.

- **Ensure the subscription of shares issued under the increase of capital to investors** (with sufficient information) for investment. Moreover, rules of authorization are used to check or motivate a public company to conduct good CG regularly. These rules emphasize fairness between shareholders and disclosure of information.

- **Ensure that the next stage of shareholders** shall obtain fairness and sufficient information. (The firm shall comply with SEC rules governing information disclosure and SET's regulations governing information disclosure and maintaining the status of listed companies).

Criteria for deciding what kind of security to offer

Both issuing shares for a capital increase and determining the method of allotment require approval from a shareholder meeting. As a director, you have the duty to comment on the suitability of the capital increase. Capital increases may be implemented in various types. Consider the following points:

- **Kind of securities:** shares, warrants, or convertible debentures
- **Type of offering**: should they be sold to present shareholders and/or the public, or offered by private placement to strategic partners, institutional investors, or other persons.
- **Offering price:** should reflect fair value of other shares or securities to be fair to both present and new shareholders.

Some different factors to determine each type of offering are as follows:

Rights issue

In a rights issue, existing shareholders are given rights to buy additional company shares in proportion to the number of shares they already hold. If all shareholders exercise their rights it will not affect earnings per share (when calculated from the total shares held after the execution of the rights issue) or the relative voting rights of the shareholders. Rights offerings do not require approval from the SEC. But you should consider the following issues:

- **Price of a rights issue:** The exercise price on the rights is normally set at lower than the market price. The shareholders may consider it as a reward, as there may be a favorable price difference between the exercise and market prices.

  The effect, however, may only be psychological. Setting the exercise price lower than market price may cause share value and earnings per share to decrease. There thus may be no change in the value of the holdings of shareholders exercising the rights. Setting the exercise price below the market price is intended to give the shareholders an incentive to exercise their rights so that the company can raise the capital it seeks. Shareholders who are unable to exercise the right may incur a loss if there is a decrease in the post-exercise value of the shares.

- **Allotment of shares remaining due to unexercised rights:** Some shareholders may not be able to exercise their rights (perhaps due to a lack of sufficient funds). The remaining shares should be dealt with in the following manner. Unlike other shareholder rights, a rights issue is a type of special interest (without cost from the decrease in value of original shares being held) that provides shareholders the benefit of the difference between the market value and exercise price. Thus the shares allotment must be conducted by a shareholder resolution. To be fair to shareholders you should follow these principles:

  - **Allow all shareholders to subscribe to the remaining shares**. They should be informed of their subscription rights when the rights are first exercised. (This type of offer is not subject to SEC approval or registration requirements.)

  - **The board of directors may offer the shares to others but the offering price must not be less than the fair market**

value of the shares. This is to prevent an inappropriate share allocation. This offering is subject to SEC approval and registration requirements.

- **Resolutions for a capital increase and remaining shares allotment should not be combined**. They should be done separately so that shareholders can vote separately on each resolution.

Public offering

This may cause authorization expenses (e.g., for financial consultants and disclosing information according to SEC rules) including for appointing underwriters. But it will gain additional investors, mostly at market price, which will help maintain share value for the present shareholders.

Most companies encounter difficulty in complying with the rules. But over time, however, this problem will decrease. If the firm already has good information disclosure, this will help the company's offering to be rapidly subscribed to.

Wide-ranging investors typically subscribe to a public offering. So to ensure fair share allotment and no conflicts of interest between executives and underwriters, the rule prohibits the offer to any directors, executives, and major shareholders, including persons relating to the underwriting firm, unless the shares are separate from the subscription.

Private placement

Private placement mostly can be completed quickly, since it is agreed within the group and information disclosure is not required according to the SEC rules. However, you should consider the following issues:

- **Price**: If the placement is at a price lower than the market, it will cause dilution, resulting in shareholder damage. In determining the price, you should consider whether the chosen person would benefit the company enough to cover the shareholders' losses.

  According to the SEC rules, private placement at a price lower than the market (e.g., less than 90% of market price) should be done only when the firm is being rehabilitated. There should be sufficient disclosure in the notice of the shareholder meeting and if 10 (ten) % of shareholders vote against the motion, it shall be rejected.

- **Amount**: A large amount of private placement may impact the control over the business, and will decrease voting rights of present shareholders. Therefore, shareholders should be informed about such an impact in the resolution.

However, if the placement causes buyers to cross a 25%, 50% or 75% trigger point, which are where changes in control over the essential business occur, takeover rules shall be observed.

- **Offer recipients**: You should avoid private placement to major shareholders, directors, executives and related persons because the shareholders may be uncertain of the fairness and transparency. If you do, you should follow the rules on connected transactions.

Offer of warrants

A warrant is an instrument that grants the right to purchase shares in the future and is useful in raising capital from diverse sources. Issuing a warrant entails simultaneously issuing two kinds of securities. The first is **shares**, which shall be considered the same as the above offer (the price of the offer shall be equal to warrant price), and the second is **warrant**s. There are several issues to be considered as follows:

- **Issuing of warrants will create obligations or costs to the company**. A warrant grants the right to purchase shares at a certain price. The right may be exercised only within the duration of warrant. It means that:

  - **If the market price is lower than the warrant price**, the investors will not exercise their right; therefore, the firm will be unable to increase capital (that means the company receives nothing).

  - **If the market price is higher than the warrant price**, the investors will exercise their rights, but the company will have lost the opportunity to offer shares in a capital increase at a higher price (for a given amount of capital increase, the number of shares issued will be less than in the case of warrants and dilution of value of the original shares will accordingly be less).

  - **Issuing warrants will intensify uncertainty in the capital increase**. As the increase of capital that supports the warrants depends on market conditions and the exercise of warrant holders' rights, it is uncertain as to whether and when the warrant holders shall exercise their rights. As a result, the firm may have financial planning difficulties. On the other hand, investors will not know as to when warrant rights would be exercised and how such actions would impact the number of shares and price/earning ratio.

    Therefore, you should approve the issuance of warrants only when you consider that the company or shareholders will obtain benefits exceeding the cost (e.g., issued together with debentures as a gift to enable the company to borrow at a lower cost).

It should be noted that issuing warrants to shareholders at a low price may be done in lieu of paying dividends (especially when the firm is short of money or has inadequately retained earnings). In addition, it should be considered that the warrants are issued by using future interest of the firm and shareholders paid to present shareholders. Therefore, it should be done only when necessary and concern about the dilution effect.

Summary of five guidelines of good governance for increasing capital

If you decide to increase capital, then you should consider shareholders impact as follows:

1. **Select type of security**, e.g., shares or warrants. Consider impacts from dilution and long-term obligations.
2. **Conditions of issuance,** e.g., price, amount and duration. You should set a price to be in line with the capital required and consider shareholders impact.
3. **Ensure fairness among shareholders**. If you offer shares at lower than the market price, then grant rights to present shareholders first because they will be directly impacted.
4. **Spend money as planned**. You should plan for spending and set a follow-up system to maintain the spending objectives. For example, the management shall report operation progress periodically and find solution if anything deviates from the plan.
5. **Provide sufficient disclosure to shareholders**. Details of the objectives and spending plans should be outlined in the meeting notice (e.g., in the annual report).

4.4 Takeover

Concept

The company that you are director of may relate to a takeover by taking over other companies or becoming a takeover target. Changing major shareholders can bring about significant differences in the company's controlling direction and risks. Therefore, you should consider carefully the best interests of shareholders. The shareholders should also participate in determining if the operation creates a large impact to the firm or to shareholders.

Related rules

The Public Company Act prescribes a rule of merger and acquisition that transactions involved purchasing or selling the whole or major part of the business must be approved at a shareholders' meeting by at least 3/4 of votes cast. However, a change in the major shareholders is not regulated in the Act.

The Securities and Exchange Act and SEC Notifications contain rules for acquiring securities for takeovers, and these apply when there are changes in control over public companies, especially listed companies. The main principles are:

- **Information disclosure:** Investors shall be informed about the possibilities of changes of company control. Thus, anyone holding securities shall report the acquisition or disposition of shares or convertible securities (i.e., convertible debentures and warrants) whenever such purchases/sales causes the total shares held by a given party to exceed 5%, or any multiple of 5%, of total shares issued . If you are not dealing with such purchases or sales, you should use the above report (or oversee the making of such reports) to analyze the possible impact on company operations.

- **Equitable treatment of shareholders:** As changing of major shareholders will affect a firm's operation, other shareholders may be impacted. SEC Notifications therefore prescribe that any person who acquires shares to a point that may result in a change of management (that is, 25%, 50% and 75% of shares with voting rights), shall make a tender offer for the purchase of shares and convertible securities from all securities holders. The rule is intended to be an exit for present shareholders who wish to sell shares at a fair price. The rule does not apply to solving a financial crisis, when the transaction is approved by the shareholders, or is made exempt by other rules.

- **Comment on tender offers:** When there is a tender offer to the company, as a director, you have a duty to give comment to the shareholders for their consideration as to whether or not they shall sell their shares according to the tender offer. This is because you know the company's information well and are duty-bound to preserve the shareholders' interests. In giving such comments, you should focus on the best interests of shareholders and have an independent financial advisor provide opinions on the price.

SET Regulations concerning the acquisition and disposition of assets. When the company acquires assets, such the other firm's securities and the transaction size is concerned as a substantial significant, the company must get shareholders' approval. For moderate significant transaction, shareholders' approval is not required but the company must obtain the board's approval and disclose to the public. (please see more details in part 4.1).

Guidelines

In general, a takeover or post-takeover operation has many complicated issues. It, therefore, requires assistance from a legal or financial advisor. The following points of view shall be considered:

If your firm takes over other companies: The transaction is mostly considered as an expansion or purchase of general assets. If the firm you intend to take over is listed, you shall ensure your company or your takeover target company complies with the Securities and Exchange Act rules.

If your company may be taken over: Such activities may be undesirable to some people, unless the firm is seeking a strategic partner to expand its business or solve financial problems. In the latter case, such transactions are mostly approved by the company or major shareholders, and are known as friendly takeovers.

However, a takeover will arise as soon as there is someone who sees the opportunity to create a value of the business higher than the current value of shares that he or she purchased. Therefore, the said takeover (although it may bring about changes to the board of directors, including you as a director) may benefit shareholders as a whole. You, as a shareholders' delegate with the duty to preserve the firm and shareholders' best interests, should not obstruct the takeover. If you seek to protect the firm from such a take over, you should create the highest value for your business and shareholders at all times so that your company is less likely to be a takeover target.

Part 5

Shareholder Meetings

Part 5
Shareholder Meetings

Concept

Although minority shareholders are more interested in remuneration than voting rights at general shareholder meetings, they are nevertheless the firms' owners who **should have rights to participate in decisions concerning fundamental issues and have the right to follow-up, examine or assess your operational results** because you are also their delegate in operating the business. Shareholders exercise these rights through shareholder meetings.

To respect shareholders**'** rights to **participate in decisions concerning fundamental issues**, the whole meeting process is designed to promote such participation, as follows:

- Shareholders shall have the right to participate in, and be sufficiently informed about, decisions concerning "fundamental issues" on the agenda of general shareholder meetings. Some issues that require approval from general shareholder meetings are mandatory by law; some are defined in the articles of association of the company. Others are issues that shall be raised by the board of directors for additional approval at general shareholder meetings.

- Shareholders should be notified about general shareholder meetings with sufficient and timely information so that they can adequately prepare.

- Shareholders should be able to vote in person or in absentia, and equal effect should be given to votes whether cast in person or in absentia. Therefore, notices convening the meeting shall contain sufficient information for the shareholders to determine if they should participate in person or by delegating a proxy with voting policies. Each shareholder must be furnished with a proxy form, to use if he wishes to name a director who shall vote per the shareholders' instructions.

- Shareholders should be furnished with sufficient and timely information concerning the convenient location, date, time and agenda of general meetings to attend and vote independently.

- Counting of voting rights shall be accurate and complete with appropriate examiners.

- A record of the meeting shall be accurate, complete, and done within a short period so that shareholders can examine it (the Public Company Act prescribes a period of not over 14 days).

In addition, to respect the shareholders' right to follow-up, examine or assess the operation of the board in shareholder meetings:

- The board should give an opportunity for shareholders to place an issue on the general meetings' agenda and to propose resolutions, as well as a guideline for the board to be followed. In addition, shareholders shall be able to propose names of persons to be selected as directors.

- The shareholders, at their best endeavor, shall have the opportunity to ask questions of the board and shall have the right to obtain clear answers on the issues.

Related rules and guidelines

In most cases, the Public Company Act shall be applied. There are some additional rules in SEC Notifications and SET Regulations. However, those rules are already explained on specific matters in this handbook (e.g., on issuing securities or connected transactions). For more details, please see handbook volume 3.

Part 6

The Sale or Purchase of Securities by Directors (Insider Trading)

Part 6
The Sale or Purchase of Securities by Directors
(Insider Trading)

Concept

Unlike director guidelines, insider trading is a personal matter that is a direct duty and is unrelated to the other directors.

The rule exists because a director is in the position of knowing useful information that would give him an advantage over general investors. You should avoid selling or purchasing securities of the firm where you are a director or an executive. If you do sell or purchase, be careful not to use undisclosed information to your advantage, as this may be illegal. Furthermore, after the purchase or sale, you should report the transactions as prescribed by rule, to inform general investors.

Related rules

The Public Company Act prescribes that a director shall report to the company of changes in the director's holdings of securities issued by the firm without delay.

The Securities and Exchange Act stipulates rules on the purchase or sale of securities which may involve the directors as follows:

- Report on the purchase or sale of securities of the top five directors and executives. You have a duty to report any purchase or sale of securities, warrants or convertible debentures in which you, your spouse or minor children hold in the firm of which you are a director or manager. The first report (Form 59-1) shall be submitted when you first hold the position. After that you shall report every transaction within three working days from the purchasing or selling date (Form 59-2).

  The report's objective is **not** to be used by the SEC to examine whether you have used insider information or not. You should purchase or sell securities legally by not breaching your duty or using inside information. The report, submitted by insiders of the firm, is inform investors about how someone very knowledgeable about the company thinks about stock price, especially when many directors or management purchase or sell in the same direction. Therefore, up-to-date and rapid information is considered essential for investors.

- Report of changes in securities holding of major investors (Form 246-2). Since major shareholders greatly influence policy and operations of the company, the Public Company Act prescribes that securities holders shall report the acquisition or disposition of shares and convertible shares (convertible debenture and warrants) whenever such purchase or sale of the securities cause the total shares held by any one person or consortium to cross 5%, or any multiple thereof, of the total number of securities outstanding. The purpose is to remind investors of the possibility of a change in company control.

- Prohibition of purchasing or selling by using inside information. Having inside information will allow you to know better than other investors how appropriate the securities price is. Such purchases or sales are therefore unfair to other investors, and the Securities and Exchange Act designates such acts as criminal offences.

Guidelines

What is important inside information?

This is information which has not been publicly released by the SEC or the SET and which may impact decisions to purchase or sell securities, or affect securities prices, such as:

- Operational results and financial status of the firm in each period (e.g., quarterly and annual financial statements, especially when the figure is significantly different from the last period's data or from investors' expectations).

- Important transactions (e.g., when entering into a joint venture agreement on a new business, negotiating a takeover, negotiating the sale of company shares, or when the firm is sued for damages).

- Circumstances that affect business operations or financial conditions of the firm (e.g., resignation of directors, cessation of operations in whole or in part, or damages from fire or natural disaster).

Protection scheme in using inside information

If a rumor that the firms' directors or management have used inside information circulated, it would have a major repercussion on the company's reputation and creditability. Therefore, you should ensure your company has additional schemes to protect inside information from being used. For example,

- The firm's articles of association should prohibit directors and management from buying or selling securities within one month before financial statements are due to be released publicly.

- Request the directors and management to disclose the names of security companies they use, including account numbers, so that the firm shall be able to contact them if necessary.

- Consistently keep reports of the purchase or sale of securities of directors and management. The company secretary may announce the report at board meetings, so that everyone shall be careful and shall follow-up the transactions among the directors themselves.

- Maintain a good confidential protection scheme of the undisclosed information to protect it from being revealed.

- Provide a rapid and accurate information disclosure (including news) system to the SET to reduce unnecessary "inside" information.

Submission of report on the purchase or sale of securities

Some directors may understand that they are duty-bound to report to the firm their purchase or sale of the company's securities according to the Public Company Act, so they assume that the firm will accordingly send the report to the SEC. To avoid any mistakes, you may submit the report directly to the SEC or via facsimile in advance to ensure that investors obtain updated and timely information.

Appendix

Rules for the Submission of Reports on Information Disclosure

Appendix
SEC Rules governing submitting reports on information disclosure

Report	**Date of submission**
Section 56: Report concerning financial conditions and the business operation.	
1. Financial statement: Starting from the next financial statement period shown in filing form or in the draft of prospectus.	
Quarterly financial statement	Within 45 days from the last date of the quarter.
Annual financial statement	There are two alternatives: 1) submit the fourth quarter financial statements (reviewed) within 45 days from the last date of the fourth quarter and submit annual financial statement (audited) within three months from the last date of the accounting period, or 2) submit annual financial statements (audited) within 60 days of the last date of the accounting period.
2. Form 56-1 (disclosure of company information)	Within three months from the last date of accounting period.
3. Form 56-2 (annual report) and meeting notice	Documents shall be submitted to all shareholders within 110 days from the last date of the accounting period and copies shall be sent to the SEC within the next working day after the documents are sent to shareholders.
Section 57 : Report of incidents occurring	
Report any incidents which may negatively impact the rights and interests of securities holders or securities prices	Report immediately according to SET regulations.
Section 59 : Report of securities being held by management and auditors (applies only to companies issuing securities or convertible securities)	
1. Form 59-1: First report	Within 30 days from the date of closing the offer for sales of securities or within 30 days from the date of appointment of a new manager or new auditor
2.Form 59-2: Subsequent reports	Within three days from the date of securities purchase or sale
Section 81 : Report of the results of sale of securities	
1. Form 81-1 (Report of results	Within 45 days from the closing date of the offer

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of securities sales)	for sale.
2. Form 81-2 (Report of utilizing rights on convertible securities)	Within 45 days from each deadline for utilizing rights or, if rights may be utilized continuously, within 15 days from the last date of each month wherein that the rights have been utilized (in case that the rights shall be applied continuously).

Remarks

1. The following cases do not require quarterly financial statements:

(1) The firm sells debentures to institutional investors which had already registered for restrictions to transfer;

(2) The firm has no securities listed on the SET and does not issue debentures;

(3) Trading of the company's securities have been suspended (SP) by SET as the firm is being rehabilitated under bankruptcy law.

For cases (2) and (3), the firm must arrange a second quarter financial report to be submitted to SEC together with an explanation of financial conditions and operation results.

2. When any of the following cases occur, the duty according to section 56 shall terminate:

(1) When there is liquidation for dissolution;

(2) When the firm is not able to sell the securities within the authorized period;

(3) When the company has satisfied its securities obligations completely, excluding convertible securities;

(4) When the certificate of derivative rights or other convertible debentures has expired and no one claims the rights;

(5) The firm has voluntarily withdrawn shares from being listed with SET and has made an offer to purchase shares from all shareholders according to SET's regulations. After the purchase offer, there are other shareholders, who did not make the offer for purchase and are not related persons, holding a total of not more than 5% of the total issued shares.;

(6) The company has a total of less than 100 securities holders of all types and the company has no securities listed with SET;

(7) When the firm has been ordered into permanent receivership by a court and has no securities listed with SET;

(8) When the firm has been ordered to suspend business operations by a legally-empowered officer or government agency and the firm has no listed securities registered with SET;

However, as soon as the company finishes the duty to report according to Section 56, the management and the auditors of the firm, which issued the securities shall terminate the duty to report according to Section 59 accordingly.